



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00BR/LSC/2015/0056**

Property : **12, 14 & 16 Collingburn Avenue, Salford, M5
3GF**

Applicants : **Mark Sullivan, Norbert Nowakowski, Justyna
Nowakowska, Louisa Cliffe**

Respondent : **Hulton Square (Ordsall) Management Co Ltd**

Representative : **Residential Management Group**

**Type of
Application** : **Landlord and Tenant Act 1985 – S27A
Landlord and Tenant Act 1985 – S20C**

**Tribunal
Members** : **Judge M Simpson
Mr J Rostron**

Date of Decision : **27 October 2015**

DECISION

Determination

1. **The applicants are not liable to pay for any of the service charges levied in respect of 2013, 2014 or 2015.**
2. **The Respondents costs of this application are not to be regarded as relevant costs for service charge purposes.**

The application.

1. This is an application by the tenants of numbers 12, 14 and 16 Collingburn Avenue, Salford in respect of service charges levied from 2013 in respect of their three houses, each of which is held on the terms of a lease, originally between LPC Living Limited and Hulton Square (Ordsall) Management Company Limited.

The background.

2. Directions were given by the Tribunal on 8 June 2015, with which both the applicant and respondent have complied. The applicants have been tenants under the terms of leases which commenced in or around 2009. The leases provide for payment of service charges, but no service charges were levied by the lessor or the management company (the respondent in this case) until 2013.
3. The applicants are challenging the whole of the service charges claimed, on the basis firstly, that they were told at the time of purchase that the service charges will not be levied in respect of their dwellings. Secondly, that has been corroborated by the fact that no service charges have been claimed for four or five years. And thirdly, in any event, the nature and extent of the service charges are such that they derive no benefit from them and should not have to pay them. Fourthly, they say, without admitting that any service charges are due and payable, that the amounts claimed are excessive.
4. The respondent management company employ professional managing agents (Residential Management Group).

The Respondent's case.

5. In accordance with the directions, the respondent management company set out a statement of case dated 26 June 2015 and supported it with extensive documentation, including copies of leases under which each of the three subject properties are held and supported by a statement of Paul Hitchen, the managing agents regional manager. Mr Hitchen was previously a property manager of the respondent management company before that company employed Residential Management Group as managing agents.

6. The statement of case refers to the leases and avers that the leases are clear that service charges are payable under the terms of those leases, notwithstanding that the leases related to houses, and not to flats or apartments. In particular, the statement of case emphasises the definitions set out in the leases, in particular, the definition of “Estate proportion” and “Estate services”.
7. The estate proportions were originally based upon square footage. But, in accordance with the terms of the lease, that was changed in March 2015 so that each property paying an equal proportion regardless of actual size. No issue is taken with that by the applicants.
8. The respondents highlight the fourth schedule of the lease, which sets out the basis upon which the ‘estate expenditure’ shall be calculated.
9. They detail the heads of charge, which are challenged by the applicants, identify how the lease provides for each of those heads of charge to be included in the service charge, with reference to the various clauses of the fifth schedule of the lease.
10. They set out the nature and extent of the grounds maintenance (20 visits per annum). They confirm that a chartered accountant is employed to do the accounts in respect of this estate, which includes a total of 73 units. They abandoned the claim for secretarial services. They further state that the health and safety and fire risk assessment is carried out by the respondent’s own health and safety department, and they set out in detail the work carried out to justify the management fees, which includes compliance with the RICS management Code.
11. They do not comment on the absence of service charge demands in the earlier years, save to say that RMG has never received any instructions not to charge these properties.
12. They set out, in helpful schedule format, a line by line response which may reasonably be condensed into an assertion that the charges are reasonable and the liability to pay is included in the lease.

The Applicants’ case

13. They aver that it was agreed when they bought their leases that there was a collateral agreement that service charges would not be levied and they produce some pre contract documentation and a letter from one applicant’s solicitor to support that contention.
14. They say that their houses are entirely self contained with no use of any common parts; they put their own bins out; the highway and pavement are adopted and any security apparatus relates to and is positioned exclusively for the flats. They have no need of any Caretaking or Grounds maintenance etc.

15. The exhibit a job description of the caretaker to illustrate that none of his/her duties relate to the houses.

The Inspection.

16. We were sufficiently unsure, from the plans and documentation, as to the layout of the estate and the interrelation between houses and flats that we inspected the estate on Tuesday, 27 October at noon. This was crucial to our decision.

Determination.

17. This hinges, in the first instance, on a proper interpretation of the Lease and the definitions contained therein.
18. The 'Estate Services', for which a Lessee has to pay, are those services and facilities which are for "the benefit of the Property or general amenity of the Estate".
19. We find, as a matter of fact, based on the evidence provided by all parties and particularly our inspection that the applicants' houses do not benefit from any of the services.
20. None of the provided services are for the general amenity of the estate. They are exclusively for the benefit of the blocks of flats which are situated at each end of the terrace of houses.
21. The modest garden areas at the entrance to each block of flats are fenced off and are effectively useable, if at all, only by the flat dwellers. The security cameras etc relate only to the blocks of flats. There are no common parts shared by the houses. There are common parts only within the blocks of flats.
22. The job description for the caretaker confirms this view.
23. The Lease contemplates this scenario. The definition of "Estate Proportion" limits the proportion payable not only to square footage (since changed, without demur) but also to each unit 'capable of enjoying the benefit of the estate Services or any of them' This clearly contemplates some units not being capable – which is the case with the applicants' houses.
24. If, as we find to be the case, none of the provided services benefit the house, there can be no justification for any management or administrative charges.
25. Therefore none of the charges demanded are payable.
26. We do not have jurisdiction to determine whether or not there was a binding collateral agreement pre Lease not to charge service charges. We determine this case on the basis of the Lease.

27. Even if we are wrong in that determination we find many of the charged items to be excessive and not reasonable. With a total expenditure of little more than £3,250 p.a., the additional fees are not justified. We would expect in house Health and safety and postages, to be included in a much more modest management fee of not more than 20% of total expenditure and for the audit fees, which are for the most basic of accounts, to be no more than £400 plus vat.
28. In the light of our determination it would not be just and equitable for any costs incurred by the Respondent to be regarded as relevant costs to be taken into account in determining any service charge payable by the applicants. That may be otiose in view of the absence of any liability, but we have dealt with it for the sake of completeness and because it was included in the application.